

Senate Bill 484

Sponsored by COMMITTEE ON COMMERCE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that person commits unlawful trade practice if person includes clause in contract for sale, lease or other transfer of real estate, goods or services that requires mandatory arbitration or that otherwise prohibits bringing of civil action for purpose of enforcing terms of contract.

A BILL FOR AN ACT

1
2 Relating to unlawful trade practices; creating new provisions; and amending ORS 36.620 and 646.608.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS 646.605 to**
5 **646.652.**

6 **SECTION 2. Except to the extent federal law provides for the enforceability of the clause,**
7 **a person may not include in any contract for the sale, lease or other transfer of real estate,**
8 **goods or services a clause that requires mandatory arbitration or that otherwise prohibits**
9 **the bringing of a civil action in the courts of this state for the purpose of enforcing the**
10 **terms of the contract.**

11 **SECTION 3. ORS 646.608 is amended to read:**

12 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
13 ness, vocation or occupation the person does any of the following:

14 (a) Passes off real estate, goods or services as those of another.

15 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
16 proval, or certification of real estate, goods or services.

17 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
18 ciation with, or certification by, another.

19 (d) Uses deceptive representations or designations of geographic origin in connection with real
20 estate, goods or services.

21 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
22 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a
23 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

24 (f) Represents that real estate or goods are original or new if they are deteriorated, altered,
25 reconditioned, reclaimed, used or secondhand.

26 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
27 or that real estate or goods are of a particular style or model, if they are of another.

28 (h) Disparages the real estate, goods, services, property or business of a customer or another
29 by false or misleading representations of fact.

30 (i) Advertises real estate, goods or services with intent not to provide them as advertised, or
31 with intent not to supply reasonably expectable public demand, unless the advertisement discloses

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 a limitation of quantity.

2 (j) Makes false or misleading representations of fact concerning the reasons for, existence of,
3 or amounts of price reductions.

4 (k) Makes false or misleading representations concerning credit availability or the nature of the
5 transaction or obligation incurred.

6 (L) Makes false or misleading representations relating to commissions or other compensation to
7 be paid in exchange for permitting real estate, goods or services to be used for model or demon-
8 stration purposes or in exchange for submitting names of potential customers.

9 (m) Performs service on or dismantles any goods or real estate when not authorized by the
10 owner or apparent owner thereof.

11 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
12 vides the information required under ORS 646.611.

13 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
14 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
15 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
16 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
17 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-
18 tomer enters into the transaction.

19 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
20 cize a product, business or service.

21 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
22 not to deliver them as promised.

23 (r) Organizes or induces or attempts to induce membership in a pyramid club.

24 (s) Makes false or misleading representations of fact concerning the offering price of, or the
25 person's cost for real estate, goods or services.

26 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
27 known material defect or material nonconformity.

28 (u) Engages in any other unfair or deceptive conduct in trade or commerce.

29 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
30 ORS 698.640, whether in a commercial or noncommercial situation.

31 (w) Manufactures mercury fever thermometers.

32 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
33 law, or is:

34 (A) Prescribed by a person licensed under ORS chapter 677; and

35 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
36 on the proper cleanup of mercury should breakage occur.

37 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
38 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
39 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
40 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
41 graph, "thermostat" means a device commonly used to sense and, through electrical communication
42 with heating, cooling or ventilation equipment, control room temperature.

43 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
44 mercury light switches.

45 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

- 1 (bb) Violates ORS 646.850 (1).
- 2 (cc) Violates any requirement of ORS 646.661 to 646.686.
- 3 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 4 (ee) Violates ORS 646.883 or 646.885.
- 5 (ff) Violates any provision of ORS 646.195.
- 6 (gg) Violates ORS 646.569.
- 7 (hh) Violates the provisions of ORS 646.859.
- 8 (ii) Violates ORS 759.290.
- 9 (jj) Violates ORS 646.872.
- 10 (kk) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 11 (LL) Violates ORS 646.563.
- 12 (mm) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 13 (nn) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
- 14 thereto.
- 15 (oo) Violates ORS 646.892 or 646.894.
- 16 (pp) Violates any provision of ORS 646.249 to 646.259.
- 17 (qq) Violates ORS 646.384.
- 18 (rr) Violates ORS 646.871.
- 19 (ss) Violates ORS 822.046.
- 20 (tt) Violates ORS 128.001.
- 21 (uu) Violates ORS 646.649 (2) to (4).
- 22 (vv) Violates ORS 646.877 (2) to (4).
- 23 (ww) Violates ORS 87.686.
- 24 (xx) Violates ORS 646.651.
- 25 (yy) Violates ORS 646.879.
- 26 (zz) Violates ORS 646.402 or any rule adopted under ORS 646.402 or 646.404.
- 27 (aaa) Violates ORS 180.440 (1).
- 28 (bbb) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 29 (ccc) Violates ORS 87.007 (2) or (3).
- 30 (ddd) Violates ORS 92.405 (1), (2) or (3).
- 31 (eee) Engages in an unlawful practice under ORS 646.648.

32 **(fff) Violates section 2 of this 2007 Act.**

33 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
 34 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

35 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
 36 need not prove competition between the parties or actual confusion or misunderstanding.

37 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
 38 torney General has first established a rule in accordance with the provisions of ORS chapter 183
 39 declaring the conduct to be unfair or deceptive in trade or commerce.

40 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
 41 under subsection (1)(aaa) of this section by a person other than a prosecuting attorney, relief is
 42 limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

43 **SECTION 4.** ORS 36.620 is amended to read:

44 36.620. (1) **Except as provided in ORS 646.608 (1)(fff)**, an agreement contained in a record to
 45 submit to arbitration any existing or subsequent controversy arising between the parties to the

1 agreement is valid, enforceable and irrevocable except upon a ground that exists at law or in equity
2 for the revocation of a contract.

3 (2) Subject to ORS 36.625 (8), the court shall decide whether an agreement to arbitrate exists
4 or a controversy is subject to an agreement to arbitrate.

5 (3) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled.

6 (4) If a party to a judicial proceeding challenges the existence of, or claims that a controversy
7 is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final
8 resolution of the issue by the court, unless the court otherwise orders.

9 **SECTION 5. Section 2 of this 2007 Act and the amendments to ORS 36.620 and 646.608 by**
10 **sections 3 and 4 of this 2007 Act apply only to contracts entered into on or after the effective**
11 **date of this 2007 Act.**

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